### UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

ADVANCED FACIAL PLASTIC SURGERY CENTER, PA

and Case 16-CA-027886

KAREN ANN CONNELLA

and Cases 16-CA-066734 16-CA-070169

VANESSA KATHERINE MILLER

#### **DECISION AND ORDER**

#### **Statement of the Cases**

On March 25, 2013, Advanced Facial Plastic Surgery Center, PA (the Respondent), Charging Parties Karen Ann Connella and Vanessa Katherine Miller, and the Acting General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

#### **Findings of Fact**

#### 1. The Respondent's business

At all material times, the Respondent, a Professional Association with an office and place of business in Dallas, Texas, has been engaged in the operation of a medical and surgical clinic providing inpatient and outpatient medical care, including injecting cosmetic grade products and operating a medical spa.

During the 12-month period ending June 30, 2012, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$250,000 and is engaged in interstate commerce.

During the 12-month period ending June 30, 2012, the Respondent, in conducting its business operation described above, purchased and received at its Dallas, Texas facility goods valued in excess of \$5,000 directly from points outside the State of Texas.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### ORDER

Based on the above findings of fact, the Formal Settlement Stipulation and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that the Respondent, Advanced Facial Plastic Surgery Center, PA, Dallas, Texas, its officers, agents, successors, and assigns shall

- 1. Cease and desist from
- (a) Promulgating and maintaining a rule that prohibits employees from discussing their wages.
  - (b) Discharging employees for discussing their wages and working conditions.
- (c) Telling or otherwise implying to employees that they have any need to be represented by an attorney in an NLRB investigation of unfair labor practice charges.
- (d) Summoning employees to meet with an attorney for the purpose of representation in NLRB proceedings.
  - (e) Paying for an attorney to represent employees in an NLRB investigation.
- (f) Reducing the hours of, suspending, or discharging employees who talk to each other about the way they are treated by managers.
- (g) Reducing the hours of, suspending, or discharging employees who engage in or contemplate actions designed to change their working conditions.
- (h) Reducing the hours of, suspending, or discharging employees who advocate for themselves and their coworkers when accused of group misconduct.

- (i) Filing lawsuits against employees in retaliation for filing charges and/or otherwise participating in proceedings with the NLRB.
- (j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Read the notice described below to the employees at its Dallas, Texas facility in the presence of Board agent(s). The notice shall be read by Dr. Benjamin Bassichis in the presence of all employees.
  - (b) Rescind the unlawful rule against wage discussions.
- (c) Rescind and remove all records of discipline from Karen Connella's file that were associated with a wage discussion and all records of discipline and misconduct that were generated by the Respondent in order to support its contention that Connella was fired lawfully, and inform Karen Connella in writing that it has done so.
- (d) Notify all employees that they have the right to obtain and/or retain separate counsel from Advanced Facial Plastic Surgery and from Dr. Bassichis.
- (e) Notify employees that they have the choice to obtain or decline legal representation in NLRB investigations and/or other NLRB proceedings.
- (f) Notify employees that they have the right to participate in NLRB investigations and/or other NLRB proceedings without notifying Advanced Facial Plastic Surgery and/or Dr. Benjamin Bassichis and/or Dr. Michelle Bassichis.
- (g) Rescind and remove all records of discipline from Vanessa Miller's file that were associated with Miller's discussions with other employees about the treatment of employees and all records of discipline and misconduct that were generated by the Respondent in order to support its contention that Miller was fired lawfully and to support its state court claims, and inform Miller in writing that it has done so.
- (h) Withdraw, with prejudice, all legal claims filed by the Respondent against Miller.
- (i) Within 14 days of receipt of written approval by the Board, pay Karen Connella \$150,000 as a make-whole remedy.
- (j) Within 14 days of receipt of written approval by the Board, pay Vanessa Miller \$165,000 as a make-whole remedy.

(k) Within 14 days of service by the Region, post at its Dallas, Texas facility, copies of the notice, on forms provided by Region 16, after being signed by the Respondent's authorized representatives. Said notice shall be posted by the Respondent and maintained by the Respondent for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. The Respondent will take reasonable steps to ensure that said notice is not altered, defaced, or covered by any other material. The Respondent shall also duplicate and mail, at its own expense, a copy of the notice to all former employees employed by the Respondent at any time since December 29, 2011.

Dated, Washington, D.C., May 29, 2013.

Mark Gaston Pearce,	Chairman
Richard F. Griffin, Jr.,	Member
Sharon Block,	Member
NATIONAL LABOR DELATIONS DOADD	

(SEAL)

NATIONAL LABOR RELATIONS BOARD

#### **APPENDIX**

# NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

## PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS

#### FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;

Choose a representative to bargain with us on your behalf;

Act together with other employees for your benefit and protection;

Choose not to engage in any of these protected activities.

**WE WILL NOT** do anything to prevent you from exercising the above rights.

**WE WILL NOT** stop you from discussing your wages and **WE WILL NOT** do anything to interfere with your exercise of that right.

**WE WILL NOT** maintain a rule that prohibits employees from discussing their wages with other employees.

**WE WILL NOT** fire employees because they exercise their right to discuss wages, hours, and working conditions with other employees.

**WE WILL NOT** require you to meet with or be represented by our attorney in an NLRB proceeding.

**WE WILL NOT** stop you from speaking up in meetings where you and your coworkers are accused of misconduct.

**WE WILL NOT** fire or suspend you or reduce your hours because you exercise your right to speak up during group meetings.

**WE WILL NOT** fire or suspend you or reduce your hours because you discuss your hours and pay.

**WE WILL NOT** file a lawsuit against you because you have filed charges with the NLRB.

**WE WILL NOT** interfere with your access to the National Labor Relations Board.

**WE WILL NOT** in any like or related manner interfere with your rights under Section 7 of the Act.

**WE HAVE** issued a rulebook that does not contain a rule against wage discussions and **WE WILL** provide you with written notification that this rule has been rescinded and that you have the right to discuss your wages and other terms and conditions of employment with other employees.

**WE WILL** pay Karen Connella, who has declined reinstatement, for the wages and other benefits she lost because we unlawfully fired her.

**WE WILL** remove from our files all references to the disciplinary actions taken against Karen Connella and **WE WILL** notify her in writing that this has been done and that AFPSC will not use the unlawful discharge against her in any way.

**YOU HAVE THE RIGHT TO SPEAK** to National Labor Relations Board agents about any matter and **WE WILL NOT** do anything to interfere with your exercise of that right.

**WE WILL** notify employees that, if they chose to be represented by counsel, they have the right to separate legal representation from Advanced Facial Plastic Surgery, Dr. Benjamin Bassichis and/or Dr. Michelle Bassichis in any NLRB investigations and NLRB proceedings.

**WE WILL** pay Vanessa Miller, who has declined reinstatement, for the wages and other benefits she lost because we unlawfully fired her.

**WE WILL** remove from our files all references to the disciplinary actions taken against Vanessa Miller and **WE WILL** notify her in writing that this has been done and that AFPSC will not use the unlawful decrease in hours or her discharge in any way.

**WE WILL** withdraw our lawsuit against Vanessa Miller with prejudice and **WE WILL** pay her damages incurred, including attorney fees.

**ALL OUR EMPLOYEES** are free to become or remain, or refrain from becoming or remaining, members of any labor organization.

ADVANCED FACIAL PLASTIC SURGERY CENTER, P.A.